



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF THE ADMINISTRATOR  
EPA SCIENCE ADVISORY BOARD

October 16, 2002

**MEMORANDUM**

**SUBJECT:** US EPA Science Advisory Board Contaminated Sediment Science Plan Review  
Panel – Documentation of Panel Formation Determination

**FROM:** Lawrence Martin / *Signed* /  
Designated Federal Officer  
EPA Science Advisory Board Staff Office (1400A)

**TO:** Vanessa Vu / *Signed* /  
Director  
EPA Science Advisory Board Staff Office (1400A)

**THRU:** Robert Flaak / *Signed* /  
Acting Deputy Director  
EPA Science Advisory Board Staff Office (1400A)

This memo is the record of determinations necessary to begin a review by the Science Advisory Board (SAB). It provides background information on this SAB review activity and then addresses:

- 1) the development of the charge for the panel;
- 2) the types of expertise needed to address the charge;
- 3) identification of parties who are potentially interested in or may be affected by the topic to be reviewed;
- 4) whether the charge involves a Particular Matter and how conflict of interest regulations under 18 U.S.C. 208. apply to members of the panel;
- 5) how regulations concerning “appearance of lack of impartiality” under 5 C.F.R. 2635.502 apply to members of the panel;
- 6) how individuals were placed on the “Short-List” posted on the SAB website as candidates for the panel and the chair selected; and
- 7) how individuals were selected for the final panel, and the roster of names.

This memo serves to document the status of decisions on each of these topics and to document the SAB Director’s approval of these decisions.

## **A. Background**

The EPA Science Advisory Board was asked by the Office of Solid Waste and Emergency Response (OSWER) for a peer review of the EPA's draft Contaminated Sediments Science Plan. A request for nominations for the peer review panel appeared in the *Federal Register* on July 30, 2002; Volume 67, Number 146; Pages 49336-49337 (Available on the SAB WEB).

In that *Federal Register* (FR) notice the Board noted this background: The Contaminated Sediments Science Plan is a mechanism for the U.S. Environmental Protection Agency (EPA) to develop and coordinate Agency-wide science activities in the contaminated sediments area. Along with the EPA's contaminated sediments science activities database, this plan provides an analysis of the current Agency science activities in this area, identifies and evaluates the science gaps, and provides a strategy for filling these gaps. The Contaminated Sediments Science Plan (CSSP) has three goals to promote the vision of providing a strong scientific basis for addressing contaminated sediments: (1) To develop and disseminate the tools and science necessary to address the management of contaminated sediments; (2) To enhance the level of coordination and communication of science activities dealing with contaminated sediments across the EPA's Program and Regional Offices and the Office of Research and Development; and (3) To develop an effective, cost-efficient strategy to promote these scientific activities and research.

It was also noted in that FR notice that interested parties were invited by OSWER to view the Draft Contaminated Sediments Science Plan (CSSP), and to provide public comment, in the July 22, 2002 FR (Volume 67, Number 140, Pages 47798- 47800). The CSSP was announced in the FR to be available on the EPA WEB site. (Available, linked to the SAB WEB).

## **B. Determinations**

1) The charge to the panel: The DFO, representatives from OSWER, and the nominated Panel Chair negotiated the draft charge appearing in the July 30, 2002 FR. The final charge, and associated background for the charge, was revised by the DFO and SAB Director, and published in the Oct.1, 2002 FR. The charge questions from EPA to the SAB Panel are:

1) The Contaminated Sediments Science Plan (CSSP) is the first official Agency science plan of its kind designed to address a significant cross-agency environmental issue in a systematic and integrated fashion. Chapter One of the CSSP discusses the goals, objectives, and how the CSSP relates to the Agency's mandate. Are the goals and objectives of the plan understandable and appropriate to the subject, and does the CSSP adequately convey the need for such a planning document?

2) Chapter Two of the CSSP provides an overview of the contaminated sediment problems and issues across the Agency. The brief description of issues in Chapter Two is meant to provide the overall context for the more detailed discussion of specific science needs given in Chapter Three. Are the major areas of contaminated sediments science identified in Chapters Two and Three (sediment site characterization, exposure assessment, human health effects and risk assessment, ecological effects and risk assessment, sediment remediation, baseline and post-remediation monitoring, risk communication, and information management and

exchange activities) addressed adequately? Are any major areas missing?

3a) Chapter Four provides the key recommendations for future Agency priority science activities, including research, from the identified research needs and discussion in Chapter Three. For each recommendation, critical U.S. EPA partners and the immediate or long-term nature of the science activity are proposed. Do the CSSP recommendations meet the CSSP's goals and objectives?

3b) Are the key recommendations clearly defined and appropriate to address the identified CSSP science needs, and are the priorities identified appropriate?

3c) Are the CSSP's recommendations responsive to the identified need for coordination, particularly intra-agency?

2) Type of Panel that will be used to conduct the review, the name of the Panel, identification of the Panel Chair, and types of expertise needed to address the charge: A panel of the SAB's Executive Committee (EC) called the "Contaminated Sediment Science Plan Review Panel (CSSP Review Panel)" will conduct the review. SAB policy is to select an existing member of the SAB to chair panels. Six well qualified members of the SAB were considered based upon their familiarity with the subject, past leadership experience with the SAB, and ability to lead an expedited review process. SAB staff, in consultation with the SAB Executive Committee Chair, initially named Dr. Steven Bartell to Chair the Panel. Dr. Bartell later elected to withdraw from the Panel due to possible conflict of interest. A member of the Environmental Engineering Committee, Dr. Michael McFarland, was recommended by the DFO and SAB staff. The SAB Director, Acting Deputy Director and DFO selected Dr. McFarland to Chair the Panel.

The SAB, in the July 30 2002 FR notice, asked for the nomination of experts to review the CSSP. In the FR notice, the SAB requested nominations of individuals with expertise in the following areas:

- human health risk assessment (particularly in persistent, bioaccumulative & toxic materials, e.g., PCBs);
- ecological risk assessment (particularly in persistent, bioaccumulative and toxic materials, e.g., PCBs);
- physico-chemical nature of sediments;
- soil contamination remediation technologies;
- baseline and post remediation site monitoring; risk communication to the public;
- information data management systems;
- ecological fate and transport modeling of contaminants in surface waters and sediments; exposure risk assessment; and
- cost-benefit valuation.

3) Identification of parties who are potentially interested in or may be affected by the topic to be reviewed: Entities involved in Superfund clean-ups, military bases where solvents and other chemicals have contaminated surface waters and sediment; various chemical manufacturers and metals fabricators who have released pollutants potentially contaminating sediments or may be engaged in contaminated sediment clean-ups, prospective dredging

operations, and communities adjoining areas containing contaminated sediments, other State and Federal agencies engaged in contaminated sediment remediation and regulation, and surface water quality managers. Additionally, the activities of research institutions and contracting research organizations could be affected.

4) Whether the charge involves a Particular Matter<sup>1</sup> and how conflict of interest regulations apply to members of the panel: The SAB panel's activity in addressing the charge for this review does not qualify as a particular matter because the advice that will result will be part of a broad and wide deliberation on the subject of research necessary to support the Agency's contaminated sediment programs and actions. The review does not focus on interests of specific people (i.e., it is not a "specific party matter"), nor does it focus on the interest of a discrete and identifiable class of people.

Nevertheless, review of research and science plans are not so straightforward with regard to conflicts of interest. Although the DFO determined that the CSSP was not a particular matter using the standard tests, there remains the possibility that research studies conducted for the Agency by prospective panel members addressing matters pertaining to contaminated sediments (roughly corresponding to the expertise identified for the panel review) could suggest impartiality. To ensure no challenge to panelist's integrity could impugn the CSSP Review Panel, the DFO proceeded with the regular examination of prospective panel member's financial disclosures to evaluate the prospect for conflicts of interest and impartiality, including the receipt of funding from EPA on topics related to the CSSP.

In order to determine how conflict of interest regulations apply to members of the panel, the DFO conducted an analysis for each panel member to determine whether the following provision of 18 U.S.C. 208 applies: "An employee is prohibiting from participating personally and substantially in an official capacity in any particular matter in which he, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest." In the review of the CSSP, activity regarding grants from the Agency to conduct research, or activities relating to contaminated sediment supported by the Agency, would also constitute a financial interest.

For this review, the DFO assumed that panel members will participate personally and substantially in the review. Using the Form 3110 financial disclosure documents submitted by all individuals who were short-listed, I determined on a case-by-case basis whether prospective panel member knew of any financial interest in this matter on the part of the SGE; the SGE's spouse or minor child; a general partner; an organization in which the SGE is serving as an officer, director, trustee, general partner, or employee; or a prospective employer. Panel members for whom the possibility of a conflict existed were referred to the OGC for determination. The DFO, relying on OGC determinations as necessary, determined that there is

---

<sup>1</sup>The term "particular matter" refers to matters that involve deliberation, decision, or action that is focused on the interests of specific people or a discrete and identifiable class of people. The term may include matters that do not involve formal parties and may extend to legislation or policy-making that is narrowly focused on the interests of a discrete and identifiable class of people. But the term does not cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of people. [5 C.F.R. 2640.103(a)(1)]

no identifiable conflict of interest for any of the proposed panel members, and that the panel's advice does address a particular matter, and will not have a direct effect on the financial interest of panelists.<sup>2</sup>

5. How regulations concerning "appearance of lack of impartiality" under 5 C.F.R. 2635.502 apply to members of the panel. The Code of Federal Regulations state that "Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the person determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee."

The CSSP review, because it addresses recommendations for research to be conducted will preclude anyone receiving EPA research support on the subject from participating. This issue is addressed satisfactorily above in #4.

6. How individuals were selected for the "Short-List" posted on the SAB website as candidates for the panel. Nearly 40 individuals were nominated in the manner prescribed in the above cited FR notice. All were sent a short questionnaire requesting they identify dates they were available to meet during the period of October 21 to November 15, 2002, and their areas of expertise from the list published in the FR and cited above. A curriculum vitae was requested, if they had not provided one to the SAB within the past calendar year.

The DFO first ensured the individuals' prospective availability for the panel's face-to-face meeting. The DFO then selected available nominees for the short-list based on the strength of their established credentials in the technical areas required for the review and described in the FR notice. The selection was discussed with the SAB Director and Acting Deputy Director.

7. How individuals were selected for the final panel. On September 10, 2002, the SAB Staff posted a notice on the SAB website inviting comment on Prospective Candidates for the CSSP Review Panel - the "short-list" (See SAB WEB). That notice stated that SAB staff selected from nominations received a "Short-List" of 23 candidates, based upon their interest, expertise, availability, and credentials. The SAB received no public comments in response to its request for "information, analysis, or documentation" that the SAB should consider in making its selection of members of the panel.

---

<sup>2</sup>A particular matter has a direct effect on a financial interest if a close causal link exists between any decision/action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter does not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy is not considered to have a direct effect. 5 C.F.R. 2640.103(a)(3)(i).

The DFO considered the following sources of information on the short-listed nominees in making this recommendation for the final panel selection:

- (a) the Confidential Financial Disclosure Forms (3110) completed by all Short-List Candidates, and supplemented with standard questions developed in conjunction with the OGC;
- (b) Curriculum Vitae provided by candidates and supplementary materials provided by them;
- (c) responses from Short-List candidates to queries about their “points of view” and relationship to the review material to be considered by the panel; and
- (d) their availability to participate in an expedited review.

On October 3, 2002 the SAB Director, Acting SAB Deputy Director, and the DFO met to discuss the proposed panel selection. Based on information presented by the DFO, the SAB Director recommended strengthening the representation of human health expertise on the panel. Because there was insufficient expertise in this area available from the initial list of nominees, and consequently the short-list, the Staff Director exercised necessary discretion in recommending that a member of the SAB possessing that expertise be selected to augment the panel. This resulted in the addition of a current member of the SAB’s Environmental Health Committee. The following names are selected for the Contaminated Sediments Science Plan Review Panel:

1. Dr. Michael McFarland, Utah State University (Chair)
2. Mr. Steve Bay, Southern California Coastal Water Research Project
3. Dr. Frank Bohlen, University of Connecticut
4. Dr. Caron Chess, Rutgers University
5. Dr. Deborah Cory-Slechta, University of Rochester
6. Dr. Richard Di Giulio, Duke University
7. Mr. L. Jay Field, U.S. National Oceanographic & Atmospheric Admin
8. Dr. Fred Pfaender, University of North Carolina
9. Mr. Douglas Splitstone, Splitstone and Associates
10. Dr. Thomas Theis, University of Illinois
11. Dr. Herbert Windom, Skidaway Oceanographic Institute